

ASSEMBLY BILL

No. 1868

Introduced by Assembly Member Pan

February 22, 2012

An act to amend Sections 399.13, 399.15, and 399.30 of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1868, as introduced, Pan. Renewable energy resources.

Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, as defined, while local publicly owned electric utilities, as defined, are under the direction of their governing board. The existing California Renewables Portfolio Standard Program (RPS program) requires a retail seller of electricity, as defined, and local publicly owned electric utilities to purchase specified minimum quantities of electricity products from eligible renewable energy resources, as defined, for specified compliance periods, sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 20% of retail sales for the period January 1, 2011, to December 31, 2013, inclusive, 25% of retail sales by December 31, 2016, and 33% of retail sales by December 31, 2020, and in all subsequent years. The RPS program, consistent with the goals of procuring the least-cost and best-fit eligible renewable energy resources that meet project viability principles, requires that all retail sellers procure a balanced portfolio of electricity products from eligible renewable energy resources, as specified (portfolio content requirements). The RPS program requires the PUC to adopt rules permitting retail sellers, beginning January 1, 2011, to accumulate excess procurement in one compliance period to

be applied to any subsequent compliance period (banking rules). The RPS program requires the governing board of a local publicly owned electric utility to adopt rules for banking in the same manner as the rules adopted by the PUC for retail sellers.

This bill would recast the requirement that the PUC adopt banking rules and would expand the banking rules to authorize excess procurement accumulated through December 31, 2010, to be applied to subsequent compliance periods if specified conditions are met. The bill would require the governing board of a local publicly owned electric utility to adopt rules for banking in the same manner as the recast and expanded rules adopted by the PUC for retail sellers.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 399.13 of the Public Utilities Code is
2 amended to read:
3 399.13. (a) (1) The commission shall direct each electrical
4 corporation to annually prepare a renewable energy procurement
5 plan that includes the matter in paragraph (5), to satisfy its
6 obligations under the renewables portfolio standard. To the extent
7 feasible, this procurement plan shall be proposed, reviewed, and
8 adopted by the commission as part of, and pursuant to, a general
9 procurement plan process. The commission shall require each
10 electrical corporation to review and update its renewable energy
11 procurement plan as it determines to be necessary.
12 (2) Every electrical corporation that owns electrical transmission
13 facilities shall annually prepare, as part of the Federal Energy
14 Regulatory Commission Order 890 process, and submit to the
15 commission, a report identifying any electrical transmission
16 facility, upgrade, or enhancement that is reasonably necessary to
17 achieve the renewables portfolio standard procurement
18 requirements of this article. Each report shall look forward at least
19 five years and, to ensure that adequate investments are made in a
20 timely manner, shall include a preliminary schedule when an
21 application for a certificate of public convenience and necessity
22 will be made, pursuant to Chapter 5 (commencing with Section
23 1001), for any electrical transmission facility identified as being
24 reasonably necessary to achieve the renewable energy resources

1 procurement requirements of this article. Each electrical
2 corporation that owns electrical transmission facilities shall ensure
3 that project-specific interconnection studies are completed in a
4 timely manner.

5 (3) The commission shall direct each retail seller to prepare and
6 submit an annual compliance report that includes all of the
7 following:

8 (A) The current status and progress made during the prior year
9 toward procurement of eligible renewable energy resources as a
10 percentage of retail sales, including, if applicable, the status of any
11 necessary siting and permitting approvals from federal, state, and
12 local agencies for those eligible renewable energy resources
13 procured by the retail seller, and the current status of compliance
14 with the portfolio content requirements of subdivision (c) of
15 Section 399.16, including procurement of eligible renewable energy
16 resources located outside the state and within the WECC and
17 unbundled renewable energy credits.

18 (B) If the retail seller is an electrical corporation, the current
19 status and progress made during the prior year toward construction
20 of, and upgrades to, transmission and distribution facilities and
21 other electrical system components it owns to interconnect eligible
22 renewable energy resources and to supply the electricity generated
23 by those resources to load, including the status of planning, siting,
24 and permitting transmission facilities by federal, state, and local
25 agencies.

26 (C) Recommendations to remove impediments to making
27 progress toward achieving the renewable energy resources
28 procurement requirements established pursuant to this article.

29 (4) The commission shall adopt, by rulemaking, all of the
30 following:

31 (A) A process that provides criteria for the rank ordering and
32 selection of least-cost and best-fit eligible renewable energy
33 resources to comply with the California Renewables Portfolio
34 Standard Program obligations on a total cost basis. This process
35 shall take into account all of the following:

36 (i) Estimates of indirect costs associated with needed
37 transmission investments and ongoing electrical corporation
38 expenses resulting from integrating and operating eligible
39 renewable energy resources.

1 (ii) The cost impact of procuring the eligible renewable energy
2 resources on the electrical corporation's electricity portfolio.

3 (iii) The viability of the project to construct and reliably operate
4 the eligible renewable energy resource, including the developer's
5 experience, the feasibility of the technology used to generate
6 electricity, and the risk that the facility will not be built, or that
7 construction will be delayed, with the result that electricity will
8 not be supplied as required by the contract.

9 (iv) Workforce recruitment, training, and retention efforts,
10 including the employment growth associated with the construction
11 and operation of eligible renewable energy resources and goals
12 for recruitment and training of women, minorities, and disabled
13 veterans.

14 ~~(B) Rules permitting retail sellers to accumulate, beginning~~
15 ~~January 1, 2011, excess procurement in one compliance period to~~
16 ~~be applied to any subsequent compliance period. The rules shall~~
17 ~~apply equally to all retail sellers. In determining the quantity of~~
18 ~~excess procurement for the applicable compliance period, the~~
19 ~~commission shall deduct from actual procurement quantities, the~~
20 ~~total amount of procurement associated with contracts of less than~~
21 ~~10 years in duration. In no event shall electricity products meeting~~
22 ~~the portfolio content of paragraph (3) of subdivision (b) of Section~~
23 ~~399.16 be counted as excess procurement.~~

24 ~~(C)~~

25 (B) Standard terms and conditions to be used by all electrical
26 corporations in contracting for eligible renewable energy resources,
27 including performance requirements for renewable generators. A
28 contract for the purchase of electricity generated by an eligible
29 renewable energy resource, at a minimum, shall include the
30 renewable energy credits associated with all electricity generation
31 specified under the contract. The standard terms and conditions
32 shall include the requirement that, no later than six months after
33 the commission's approval of an electricity purchase agreement
34 entered into pursuant to this article, the following information
35 about the agreement shall be disclosed by the commission: party
36 names, resource type, project location, and project capacity.

37 ~~(D)~~

38 (C) An appropriate minimum margin of procurement above the
39 minimum procurement level necessary to comply with the
40 renewables portfolio standard to mitigate the risk that renewable

1 projects planned or under contract are delayed or canceled. This
2 paragraph does not preclude an electrical corporation from
3 voluntarily proposing a margin of procurement above the
4 appropriate minimum margin established by the commission.

5 (5) Consistent with the goal of increasing California's reliance
6 on eligible renewable energy resources, the renewable energy
7 procurement plan submitted by an electrical corporation shall
8 include all of the following:

9 (A) An assessment of annual or multiyear portfolio supplies
10 and demand to determine the optimal mix of eligible renewable
11 energy resources with deliverability characteristics that may include
12 peaking, dispatchable, baseload, firm, and as-available capacity.

13 (B) Potential compliance delays related to the conditions
14 described in paragraph (4) of subdivision (b) of Section 399.15.

15 (C) A bid solicitation setting forth the need for eligible
16 renewable energy resources of each deliverability characteristic,
17 required online dates, and locational preferences, if any.

18 (D) A status update on the development schedule of all eligible
19 renewable energy resources currently under contract.

20 (E) Consideration of mechanisms for price adjustments
21 associated with the costs of key components for eligible renewable
22 energy resource projects with online dates more than 24 months
23 after the date of contract execution.

24 (F) An assessment of the risk that an eligible renewable energy
25 resource will not be built, or that construction will be delayed,
26 with the result that electricity will not be delivered as required by
27 the contract.

28 (6) In soliciting and procuring eligible renewable energy
29 resources, each electrical corporation shall offer contracts of no
30 less than 10 years duration, unless the commission approves of a
31 contract of shorter duration.

32 (7) In soliciting and procuring eligible renewable energy
33 resources for California-based projects, each electrical corporation
34 shall give preference to renewable energy projects that provide
35 environmental and economic benefits to communities afflicted
36 with poverty or high unemployment, or that suffer from high
37 emission levels of toxic air contaminants, criteria air pollutants,
38 and greenhouse gases.

39 (b) A retail seller may enter into a combination of long- and
40 short-term contracts for electricity and associated renewable energy

1 credits. The commission may authorize a retail seller to enter into
2 a contract of less than 10 years' duration with an eligible renewable
3 energy resource, if the commission has established, for each retail
4 seller, minimum quantities of eligible renewable energy resources
5 to be procured through contracts of at least 10 years' duration.

6 (c) The commission shall review and accept, modify, or reject
7 each electrical corporation's renewable energy resource
8 procurement plan prior to the commencement of renewable energy
9 procurement pursuant to this article by an electrical corporation.

10 (d) Unless previously preapproved by the commission, an
11 electrical corporation shall submit a contract for the generation of
12 an eligible renewable energy resource to the commission for review
13 and approval consistent with an approved renewable energy
14 resource procurement plan. If the commission determines that the
15 bid prices are elevated due to a lack of effective competition among
16 the bidders, the commission shall direct the electrical corporation
17 to renegotiate the contracts or conduct a new solicitation.

18 (e) If an electrical corporation fails to comply with a commission
19 order adopting a renewable energy resource procurement plan, the
20 commission shall exercise its authority pursuant to Section 2113
21 to require compliance. The commission shall enforce comparable
22 penalties on any retail seller that is not an electrical corporation
23 that fails to meet the procurement targets established pursuant to
24 Section 399.15.

25 (f) (1) The commission may authorize a procurement entity to
26 enter into contracts on behalf of customers of a retail seller for
27 electricity products from eligible renewable energy resources to
28 satisfy the retail seller's renewables portfolio standard procurement
29 requirements. The commission shall not require any person or
30 corporation to act as a procurement entity or require any party to
31 purchase eligible renewable energy resources from a procurement
32 entity.

33 (2) Subject to review and approval by the commission, the
34 procurement entity shall be permitted to recover reasonable
35 administrative and procurement costs through the retail rates of
36 end-use customers that are served by the procurement entity and
37 are directly benefiting from the procurement of eligible renewable
38 energy resources.

39 (g) Procurement and administrative costs associated with
40 contracts entered into by an electrical corporation for eligible

1 renewable energy resources pursuant to this article and approved
2 by the commission are reasonable and prudent and shall be
3 recoverable in rates.

4 (h) Construction, alteration, demolition, installation, and repair
5 work on an eligible renewable energy resource that receives
6 production incentives pursuant to Section 25742 of the Public
7 Resources Code, including work performed to qualify, receive, or
8 maintain production incentives, are “public works” for the purposes
9 of Chapter 1 (commencing with Section 1720) of Part 7 of Division
10 2 of the Labor Code.

11 SEC. 2. Section 399.15 of the Public Utilities Code is amended
12 to read:

13 399.15. (a) In order to fulfill unmet long-term resource needs,
14 the commission shall establish a renewables portfolio standard
15 requiring all retail sellers to procure a minimum quantity of
16 electricity products from eligible renewable energy resources as
17 a specified percentage of total kilowatthours sold to their retail
18 end-use customers each compliance period to achieve the targets
19 established under this article. For any retail seller procuring at least
20 14 percent of retail sales from eligible renewable energy resources
21 in 2010, the deficits associated with any previous renewables
22 portfolio standard shall not be added to any procurement
23 requirement pursuant to this article.

24 (b) The commission shall implement renewables portfolio
25 standard procurement requirements only as follows:

26 (1) Each retail seller shall procure a minimum quantity of
27 eligible renewable energy resources for each of the following
28 compliance periods:

29 (A) January 1, 2011, to December 31, 2013, inclusive.

30 (B) January 1, 2014, to December 31, 2016, inclusive.

31 (C) January 1, 2017, to December 31, 2020, inclusive.

32 (2) (A) No later than January 1, 2012, the commission shall
33 establish the quantity of electricity products from eligible
34 renewable energy resources to be procured by the retail seller for
35 each compliance period. These quantities shall be established in
36 the same manner for all retail sellers and result in the same
37 percentages used to establish compliance period quantities for all
38 retail sellers.

39 (B) In establishing quantities for the compliance period from
40 January 1, 2011, to December 31, 2013, inclusive, the commission

1 shall require procurement for each retail seller equal to an average
2 of 20 percent of retail sales. For the following compliance periods,
3 the quantities shall reflect reasonable progress in each of the
4 intervening years sufficient to ensure that the procurement of
5 electricity products from eligible renewable energy resources
6 achieves 25 percent of retail sales by December 31, 2016, and 33
7 percent of retail sales by December 31, 2020. The commission
8 shall require retail sellers to procure not less than 33 percent of
9 retail sales of electricity products from eligible renewable energy
10 resources in all subsequent years.

11 (C) Retail sellers shall be obligated to procure no less than the
12 quantities associated with all intervening years by the end of each
13 compliance period. Retail sellers shall not be required to
14 demonstrate a specific quantity of procurement for any individual
15 intervening year.

16 (3) The commission shall not require the procurement of eligible
17 renewable energy resources in excess of the quantities identified
18 in paragraph (2). A retail seller may voluntarily increase its
19 procurement of eligible renewable energy resources beyond the
20 renewables portfolio standard procurement requirements.

21 (4) Only for purposes of establishing the renewables portfolio
22 standard procurement requirements of paragraph (1) and
23 determining the quantities pursuant to paragraph (2), the
24 commission shall include all electricity sold to retail customers by
25 the Department of Water Resources pursuant to Division 27
26 (commencing with Section 80000) of the Water Code in the
27 calculation of retail sales by an electrical corporation.

28 (5) *The commission shall adopt rules permitting a retail seller*
29 *to apply excess procurement in one period to subsequent*
30 *compliance periods, consistent with the following:*

31 (A) *Beginning January 1, 2011, excess procurement in one*
32 *compliance period may be applied to any subsequent compliance*
33 *period. The rules shall apply equally to all retail sellers. In*
34 *determining the quantity of excess procurement for the applicable*
35 *compliance period, the retail seller shall deduct from actual*
36 *procurement quantities, the total amount of procurement associated*
37 *with contracts of less than 10 years in duration, unless the contract*
38 *was executed prior to January 1, 2010, in which event, the retail*
39 *seller shall deduct procurement associated with a contract of less*
40 *than seven years in duration. Electricity products meeting the*

1 *portfolio content of paragraph (3) of subdivision (b) of Section*
2 *399.16 shall not be counted as excess procurement.*

3 *(B) Excess procurement accumulated through December 31,*
4 *2010, may be applied to subsequent compliance periods if all of*
5 *the following conditions are met:*

6 *(i) The excess procurement is calculated based upon annual*
7 *targets for the procurement of eligible renewable energy resources*
8 *in effect for the retail seller beginning January 1, 2006.*

9 *(ii) The targets for the procurement of eligible renewable energy*
10 *resources adopted for the retail seller specified achieving a 20*
11 *percent renewables portfolio standard by no later than December*
12 *31, 2010.*

13 *(iii) The targets for the procurement of eligible renewable*
14 *energy resources adopted for the retail seller increased for each*
15 *year prior to the year beginning January 1, 2011.*

16 *(iv) The rules shall apply equally to all retail sellers.*

17 *(v) In determining the quantity of excess procurement, the retail*
18 *seller shall deduct from actual procurement quantities the total*
19 *amount of procurement associated with contracts of less than seven*
20 *years in duration.*

21 *(vi) Electricity products meeting the portfolio content of*
22 *paragraph (3) of subdivision (b) of Section 399.16 shall not be*
23 *counted as excess procurement.*

24 ~~(5)~~

25 *(6) The commission shall waive enforcement of this section if*
26 *it finds that the retail seller has demonstrated any of the following*
27 *conditions are beyond the control of the retail seller and will*
28 *prevent compliance:*

29 *(A) There is inadequate transmission capacity to allow for*
30 *sufficient electricity to be delivered from proposed eligible*
31 *renewable energy resource projects using the current operational*
32 *protocols of the Independent System Operator. In making its*
33 *findings relative to the existence of this condition with respect to*
34 *a retail seller that owns transmission lines, the commission shall*
35 *consider both of the following:*

36 *(i) Whether the retail seller has undertaken, in a timely fashion,*
37 *reasonable measures under its control and consistent with its*
38 *obligations under local, state, and federal laws and regulations, to*
39 *develop and construct new transmission lines or upgrades to*
40 *existing lines intended to transmit electricity generated by eligible*

1 renewable energy resources. In determining the reasonableness of
2 a retail seller's actions, the commission shall consider the retail
3 seller's expectations for full-cost recovery for these transmission
4 lines and upgrades.

5 (ii) Whether the retail seller has taken all reasonable operational
6 measures to maximize cost-effective deliveries of electricity from
7 eligible renewable energy resources in advance of transmission
8 availability.

9 (B) Permitting, interconnection, or other circumstances that
10 delay procured eligible renewable energy resource projects, or
11 there is an insufficient supply of eligible renewable energy
12 resources available to the retail seller. In making a finding that this
13 condition prevents timely compliance, the commission shall
14 consider whether the retail seller has done all of the following:

15 (i) Prudently managed portfolio risks, including relying on a
16 sufficient number of viable projects.

17 (ii) Sought to develop one of the following: its own eligible
18 renewable energy resources, transmission to interconnect to eligible
19 renewable energy resources, or energy storage used to integrate
20 eligible renewable energy resources. This clause shall not require
21 an electrical corporation to pursue development of eligible
22 renewable energy resources pursuant to Section 399.14.

23 (iii) Procured an appropriate minimum margin of procurement
24 above the minimum procurement level necessary to comply with
25 the renewables portfolio standard to compensate for foreseeable
26 delays or insufficient supply.

27 (iv) Taken reasonable measures, under the control of the retail
28 seller, to procure cost-effective distributed generation and allowable
29 unbundled renewable energy credits.

30 (C) Unanticipated curtailment of eligible renewable energy
31 resources necessary to address the needs of a balancing authority.

32 ~~(6)~~

33 (7) If the commission waives the compliance requirements of
34 this section, the commission shall establish additional reporting
35 requirements on the retail seller to demonstrate that all reasonable
36 actions under the control of the retail seller are taken in each of
37 the intervening years sufficient to satisfy future procurement
38 requirements.

39 ~~(7)~~

1 (8) The commission shall not waive enforcement pursuant to
2 this section, unless the retail seller demonstrates that it has taken
3 all reasonable actions under its control, as set forth in paragraph
4 (5), to achieve full compliance.

5 ~~(8)~~

6 (9) If a retail seller fails to procure sufficient eligible renewable
7 energy resources to comply with a procurement requirement
8 pursuant to paragraphs (1) and (2) and fails to obtain an order from
9 the commission waiving enforcement pursuant to paragraph (5),
10 the commission shall exercise its authority pursuant to Section
11 2113.

12 ~~(9)~~

13 (10) Deficits associated with the compliance period shall not
14 be added to a future compliance period.

15 (c) The commission shall establish a limitation for each electrical
16 corporation on the procurement expenditures for all eligible
17 renewable energy resources used to comply with the renewables
18 portfolio standard. In establishing this limitation, the commission
19 shall rely on the following:

20 (1) The most recent renewable energy procurement plan.

21 (2) Procurement expenditures that approximate the expected
22 cost of building, owning, and operating eligible renewable energy
23 resources.

24 (3) The potential that some planned resource additions may be
25 delayed or canceled.

26 (d) In developing the limitation pursuant to subdivision (c), the
27 commission shall ensure all of the following:

28 (1) The limitation is set at a level that prevents disproportionate
29 rate impacts.

30 (2) The costs of all procurement credited toward achieving the
31 renewables portfolio standard are counted towards the limitation.

32 (3) Procurement expenditures do not include any indirect
33 expenses, including imbalance energy charges, sale of excess
34 energy, decreased generation from existing resources, transmission
35 upgrades, or the costs associated with relicensing any utility-owned
36 hydroelectric facilities.

37 (e) (1) No later than January 1, 2016, the commission shall
38 prepare a report to the Legislature assessing whether each electrical
39 corporation can achieve a 33-percent renewables portfolio standard
40 by December 31, 2020, and maintain that level thereafter, within

1 the adopted cost limitations. If the commission determines that it
2 is necessary to change the limitation for procurement costs incurred
3 by any electrical corporation after that date, it may propose a
4 revised cap consistent with the criteria in subdivisions (c) and (d).
5 The proposed modifications shall take effect no earlier than January
6 1, 2017.

7 (2) Notwithstanding Section 10231.5 of the Government Code,
8 the requirement for submitting a report imposed under paragraph
9 (1) is inoperative on January 1, 2021.

10 (3) A report to be submitted pursuant to paragraph (1) shall be
11 submitted in compliance with Section 9795 of the Government
12 Code.

13 (f) If the cost limitation for an electrical corporation is
14 insufficient to support the projected costs of meeting the
15 renewables portfolio standard procurement requirements, the
16 electrical corporation may refrain from entering into new contracts
17 or constructing facilities beyond the quantity that can be procured
18 within the limitation, unless eligible renewable energy resources
19 can be procured without exceeding a de minimis increase in rates,
20 consistent with the long-term procurement plan established for the
21 electrical corporation pursuant to Section 454.5.

22 (g) (1) The commission shall monitor the status of the cost
23 limitation for each electrical corporation in order to ensure
24 compliance with this article.

25 (2) If the commission determines that an electrical corporation
26 may exceed its cost limitation prior to achieving the renewables
27 portfolio standard procurement requirements, the commission shall
28 do both of the following within 60 days of making that
29 determination:

30 (A) Investigate and identify the reasons why the electrical
31 corporation may exceed its annual cost limitation.

32 (B) Notify the appropriate policy and fiscal committees of the
33 Legislature that the electrical corporation may exceed its cost
34 limitation, and include the reasons why the electrical corporation
35 may exceed its cost limitation.

36 (h) The establishment of a renewables portfolio standard shall
37 not constitute implementation by the commission of the federal
38 Public Utility Regulatory Policies Act of 1978 (Public Law
39 95-617).

1 SEC. 3. Section 399.30 of the Public Utilities Code is amended
2 to read:

3 399.30. (a) In order to fulfill unmet long-term generation
4 resource needs, each local publicly owned electric utility shall
5 adopt and implement a renewable energy resources procurement
6 plan that requires the utility to procure a minimum quantity of
7 electricity products from eligible renewable energy resources,
8 including renewable energy credits, as a specified percentage of
9 total kilowatthours sold to the utility's retail end-use customers,
10 each compliance period, to achieve the targets of subdivision (c).

11 (b) The governing board shall implement procurement targets
12 for a local publicly owned electric utility that require the utility to
13 procure a minimum quantity of eligible renewable energy resources
14 for each of the following compliance periods:

15 (1) January 1, 2011, to December 31, 2013, inclusive.

16 (2) January 1, 2014, to December 31, 2016, inclusive.

17 (3) January 1, 2017, to December 31, 2020, inclusive.

18 (c) The governing board of a local publicly owned electric utility
19 shall ensure all of the following:

20 (1) The quantities of eligible renewable energy resources to be
21 procured for the compliance period from January 1, 2011, to
22 December 31, 2013, inclusive, are equal to an average of 20 percent
23 of retail sales.

24 (2) The quantities of eligible renewable energy resources to be
25 procured for all other compliance periods reflect reasonable
26 progress in each of the intervening years sufficient to ensure that
27 the procurement of electricity products from eligible renewable
28 energy resources achieves 25 percent of retail sales by December
29 31, 2016, and 33 percent of retail sales by December 31, 2020.
30 The local governing board shall require the local publicly owned
31 utilities to procure not less than 33 percent of retail sales of
32 electricity products from eligible renewable energy resources in
33 all subsequent years.

34 (3) A local publicly owned electric utility shall adopt
35 procurement requirements consistent with Section 399.16.

36 (d) The governing board of a local publicly owned electric utility
37 may adopt the following measures:

38 (1) Rules permitting the utility to apply excess procurement in
39 one compliance period to subsequent compliance periods in the

1 same manner as allowed for retail sellers pursuant to *subdivision*
2 *(b) of Section 399.13 399.15.*

3 (2) Conditions that allow for delaying timely compliance
4 consistent with subdivision (b) of Section 399.15.

5 (3) Cost limitations for procurement expenditures consistent
6 with subdivision (c) of Section 399.15.

7 (e) The governing board of the local publicly owned electric
8 utility shall adopt a program for the enforcement of this article on
9 or before January 1, 2012. The program shall be adopted at a
10 publicly noticed meeting offering all interested parties an
11 opportunity to comment. Not less than 30 days' notice shall be
12 given to the public of any meeting held for purposes of adopting
13 the program. Not less than 10 days' notice shall be given to the
14 public before any meeting is held to make a substantive change to
15 the program.

16 (f) (1) Each local publicly owned electric utility shall annually
17 post notice, in accordance with Chapter 9 (commencing with
18 Section 54950) of Part 1 of Division 2 of Title 5 of the Government
19 Code, whenever its governing body will deliberate in public on its
20 renewable energy resources procurement plan.

21 (2) Contemporaneous with the posting of the notice of a public
22 meeting to consider the renewable energy resources procurement
23 plan, the local publicly owned electric utility shall notify the
24 Energy Commission of the date, time, and location of the meeting
25 in order to enable the Energy Commission to post the information
26 on its Internet Web site. This requirement is satisfied if the local
27 publicly owned electric utility provides the uniform resource
28 locator (URL) that links to this information.

29 (3) Upon distribution to its governing body of information
30 related to its renewable energy resources procurement status and
31 future plans, for its consideration at a noticed public meeting, the
32 local publicly owned electric utility shall make that information
33 available to the public and shall provide the Energy Commission
34 with an electronic copy of the documents for posting on the Energy
35 Commission's Internet Web site. This requirement is satisfied if
36 the local publicly owned electric utility provides the uniform
37 resource locator (URL) that links to the documents or information
38 regarding other manners of access to the documents.

39 (g) A local publicly owned electric utility shall annually submit
40 to the Energy Commission documentation regarding eligible

1 renewable energy resources procurement contracts that it executed
2 during the prior year, as follows:

3 (1) A description of the eligible renewable energy resource,
4 including the duration of the contract or electricity purchase
5 agreement.

6 (2) A description and identification of the electrical generating
7 facility providing the eligible renewable energy resource under
8 the contract.

9 (3) An estimate of the percentage increase in the utility's total
10 retail sales of electricity from eligible renewable energy resources
11 that will result from the contract.

12 (h) A public utility district that receives all of its electricity
13 pursuant to a preference right adopted and authorized by the United
14 States Congress pursuant to Section 4 of the Trinity River Division
15 Act of August 12, 1955 (Public Law 84-386) shall be in compliance
16 with the renewable energy procurement requirements of this article.

17 (i) For a local publicly owned electric utility that was in
18 existence on or before January 1, 2009, that provides retail electric
19 service to 15,000 or fewer customer accounts in California, and is
20 interconnected to a balancing authority located outside this state
21 but within the WECC, an eligible renewable energy resource
22 includes a facility that is located outside California that is
23 connected to the WECC transmission system, if all of the following
24 conditions are met:

25 (1) The electricity generated by the facility is procured by the
26 local publicly owned electric utility, is delivered to the balancing
27 authority area in which the local publicly owned electric utility is
28 located, and is not used to fulfill renewable energy procurement
29 requirements of other states.

30 (2) The local publicly owned electric utility participates in, and
31 complies with, the accounting system administered by the Energy
32 Commission pursuant to this article.

33 (3) The Energy Commission verifies that the electricity
34 generated by the facility is eligible to meet the renewables portfolio
35 standard procurement requirements.

36 (j) Notwithstanding subdivision (a), for a local publicly owned
37 electric utility that is a joint powers authority of districts established
38 pursuant to state law on or before January 1, 2005, that furnish
39 electric services other than to residential customers, and is formed
40 pursuant to the Irrigation District Law (Division 11 (commencing

with Section 20500) of the Water Code), the percentage of total kilowatthours sold to the district's retail end-use customers, upon which the renewables portfolio standard procurement requirements in subdivision (b) are calculated, shall be based on the authority's average retail sales over the previous seven years. If the authority has not furnished electric service for seven years, then the calculation shall be based on average retail sales over the number of completed years during which the authority has provided electric service.

(k) A local publicly owned electric utility in a city and county that only receives greater than 67 percent of its electricity sources from hydroelectric generation located within the state that it owns and operates, and that does not meet the definition of a "renewable electrical generation facility" pursuant to Section 25741 of the Public Resources Code, shall be required to procure eligible renewable energy resources, including renewable energy credits, to meet only the electricity demands unsatisfied by its hydroelectric generation in any given year, in order to satisfy its renewable energy procurement requirements.

(l) Each local publicly owned electric utility shall report, on an annual basis, to its customers and to the Energy Commission, all of the following:

(1) Expenditures of public goods funds collected pursuant to Section 385 for eligible renewable energy resource development. Reports shall contain a description of programs, expenditures, and expected or actual results.

(2) The resource mix used to serve its customers by energy source.

(3) The utility's status in implementing a renewables portfolio standard pursuant to subdivision (a) and the utility's progress toward attaining the standard following implementation.

(m) A local publicly owned electric utility shall retain discretion over both of the following:

(1) The mix of eligible renewable energy resources procured by the utility and those additional generation resources procured by the utility for purposes of ensuring resource adequacy and reliability.

(2) The reasonable costs incurred by the utility for eligible renewable energy resources owned by the utility.

1 (n) On or before July 1, 2011, the Energy Commission shall
2 adopt regulations specifying procedures for enforcement of this
3 article. The regulations shall include a public process under which
4 the Energy Commission may issue a notice of violation and
5 correction against a local publicly owned electric utility for failure
6 to comply with this article, and for referral of violations to the
7 State Air Resources Board for penalties pursuant to subdivision
8 (o).

9 (o) (1) Upon a determination by the Energy Commission that
10 a local publicly owned electric utility has failed to comply with
11 this article, the Energy Commission shall refer the failure to comply
12 with this article to the State Air Resources Board, which may
13 impose penalties to enforce this article consistent with Part 6
14 (commencing with Section 38580) of Division 25.5 of the Health
15 and Safety Code. Any penalties imposed shall be comparable to
16 those adopted by the commission for noncompliance by retail
17 sellers.

18 (2) If Division 25.5 (commencing with Section 38500) of the
19 Health and Safety Code is suspended or repealed, the State Air
20 Resources Board may take action to enforce this article on local
21 publicly owned electric utilities consistent with Section 41513 of
22 the Health and Safety Code, and impose penalties on a local
23 publicly owned electric utility consistent with Article 3
24 (commencing with Section 42400) of Chapter 4 of Part 4 of, and
25 Chapter 1.5 (commencing with Section 43025) of Part 5 of,
26 Division 26 of the Health and Safety Code.

27 (3) For the purpose of this subdivision, this section is an
28 emissions reduction measure pursuant to Section 38580 of the
29 Health and Safety Code.

30 (4) If the State Air Resources Board has imposed a penalty upon
31 a local publicly owned electric utility for the utility's failure to
32 comply with this article, the State Air Resources Board shall not
33 impose an additional penalty for the same infraction, or the same
34 failure to comply, with any renewables procurement requirement
35 imposed upon the utility pursuant to the California Global Warming
36 Solutions Act of 2006 (Division 25.5 (commencing with Section
37 38500) of the Health and Safety Code).

38 (5) Any penalties collected by the State Air Resources Board
39 pursuant to this article shall be deposited in the Air Pollution
40 Control Fund and, upon appropriation by the Legislature, shall be

- 1 expended for reducing emissions of air pollution or greenhouse
- 2 gases within the same geographic area as the local publicly owned
- 3 electric utility.
- 4 (p) The commission has no authority or jurisdiction to enforce
- 5 any of the requirements of this article on a local publicly owned
- 6 electric utility.